

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA, :
:
v. : 11-CR-414 (JBW)
:
LAWRENCE DICRISTINA, : December 12, 2011
:
Defendant. : Brooklyn, New York
:
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: LORETTA LYNCH, ESQ.
UNITED STATES ATTORNEY
BY: MARISA SEIFAN, ESQ.
LAN NGUYEN, ESQ.
ASSISTANT U.S. ATTORNEYS
271 Cadman Plaza East
Brooklyn, New York 11201

For the Defendant: KANNAN SUNDARAM, ESQ.

Audio Operator:

Court Transcriber: ARIA SERVICES, INC.
c/o Elizabeth Barron
102 Sparrow Ridge Road
Carmel, NY 10512
(845) 260-1377

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 THE CLERK: Criminal cause for pleading in United
2 States v. Lawrence DiCristina, Docket Number 11-CR-414.

3 Counsel, please state your names for the record
4 starting with the government.

5 MS. SEIFAN: Marisa Seifan and Lam Nguyen for the
6 United States. Good afternoon, your Honor.

7 THE COURT: Good afternoon.

8 MR. SUNDARAM: Kannan Sundaram Federal Defenders
9 for Mr. DiCristina. Good afternoon.

10 THE COURT: Good afternoon, counselors.

11 Good afternoon, Mr. DiCristina.

12 THE DEFENDANT: Good afternoon, your Honor.

13 THE COURT: I understand there's been a
14 superceding indictment handed up by a grand jury in this
15 matter, and it's a two count indictment and your client
16 intends to plead guilty to Count 2, Mr. Sundaram?

17 MR. SUNDARAM: That's correct, under a plea
18 agreement.

19 THE COURT: Now, Mr. DiCristina, as you may know,
20 your case has been assigned to Judge Weinstein, and he's a
21 district judge who will make the ultimate decision whether
22 to accept any guilty plea in this. If he does, he will be
23 the judge who will sentence you. You have the absolute
24 right to have Judge Weinstein listen to your plea and if you
25 choose to do so, that will be without any prejudice to you.

1 Do you understand?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, I understand, as your lawyer
4 advises, that you will be pleading guilty to the second
5 count of the superceding indictment in this matter. I just
6 want to confirm that you have received a copy of the
7 superceding indictment and discussed the charges set forth
8 therein with your attorney.

9 THE DEFENDANT: Yes.

10 THE COURT: With respect to the first count, is a
11 count concerning conspiracy to operate an illegal gambling
12 business, and it charges you and your co-defendant Stefano
13 Lombardo with having engaged into a conspiracy to manage,
14 supervise, direct, and own or part of an illegal gambling
15 business. More specifically, a business on 3741B Victory
16 Boulevard on Staten Island in violation of the specified
17 state law.

18 In Count 2 you're charged with having actually
19 engaged in the conduct, finance, management, supervision,
20 and ownership of part or all of an illegal gambling business
21 during the time period specified.

22 Have you discussed both counts with your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand the charges?

25 THE DEFENDANT: Yes.

1 THE COURT: Are you prepared to plead guilty to
2 the first count?

3 THE DEFENDANT: Yes.

4 MR. SUNDARAM: Your Honor, it's the second count.

5 THE COURT: I'm sorry. Are you prepared to enter
6 a plea as to the first count, and then I will go through the
7 allocution for the Count 2.

8 Are you prepared to enter a plea to the first
9 count?

10 THE DEFENDANT: Not guilty.

11 THE COURT: Okay. Now, with respect to the second
12 count to which you intend to plead, as I've been advised,
13 guilty pursuant to a written plea agreement, I want you to
14 understand that Judge Weinstein has referred your guilty
15 plea to me, and he will be the judge who will sentence you,
16 if he accepts your guilty plea. You have the absolute right
17 to have Judge Weinstein listen to your plea. If you choose
18 to do so, that will be without any prejudice to you.

19 Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: I have in my hand a consent form
22 indicating that you have consented to having me hear your
23 plea.

24 Did you discuss this consent form with your
25 attorney?

1 THE DEFENDANT: Yes.

2 THE COURT: Is this your signature on the line in
3 the middle of the page above the word "defendant?"

4 THE DEFENDANT: Yes.

5 THE COURT: Do you give your consent voluntarily
6 and of your own free will to having me hear your plea?

7 THE DEFENDANT: Yes.

8 THE COURT: Since this Court must be certain that
9 you understand your rights and the consequences of your
10 plea, I will explain certain matters to you and ask you
11 questions. If I say anything you don't understand, please
12 say so, and I will reword.

13 Is that clear?

14 THE DEFENDANT: Yes.

15 THE COURT: Would the clerk please swear the
16 defendant.

17 (Defendant is sworn.)

18 THE COURT: Mr. DiCristina, you have just taken an
19 oath to tell the truth. Do you understand that if you
20 answer any of my questions falsely, your answers might later
21 be used against you in another criminal prosecution for
22 perjury or for making a false statement?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: What is your full name?

25 THE DEFENDANT: Lawrence J. DiCristina.

1 THE COURT: How old are you?

2 THE DEFENDANT: Thirty-three.

3 THE COURT: What schooling or education have you
4 had?

5 THE DEFENDANT: Eleventh grade.

6 THE COURT: Are you presently or have you recently
7 been under the care of a doctor or psychiatrist?

8 THE DEFENDANT: No.

9 THE COURT: Have you ever been hospitalized or
10 treated for any mental illness or addiction to drugs,
11 alcohol, or any other substance?

12 THE DEFENDANT: No.

13 THE COURT: In the past 24 hours, have you taken
14 any pills, medicine, or drugs of any kind, or drunk
15 alcoholic beverages?

16 THE DEFENDANT: No.

17 THE COURT: Is your mind clear today?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand the nature of these
20 proceedings?

21 THE DEFENDANT: Yes.

22 THE COURT: Mr. Sundaram, have you discussed the
23 question of a guilty plea with your client?

24 MR. SUNDARAM: Yes.

25 THE COURT: In your view, does he understand the

1 rights he would be waiving by pleading guilty?

2 MR. SUNDARAM: He does.

3 THE COURT: Is he capable of understanding the
4 nature of these proceedings?

5 MR. SUNDARAM: Yes.

6 THE COURT: Do you have any doubts as to his
7 competency to proceed today?

8 MR. SUNDARAM: No.

9 THE COURT: Have you advised him of the penalties
10 that can be imposed and discussed the applicable sentencing
11 considerations, including the sentencing guidelines?

12 MR. SUNDARAM: I have.

13 THE COURT: Mr. DiCristina, have you had a full
14 opportunity to discuss your case with your attorney?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you fully satisfied with your
17 attorney and the assistance he's given you thus far in this
18 matter?

19 THE DEFENDANT: Yes.

20 THE COURT: Now, I have in my hand a copy of the
21 indictment, which we discussed earlier. It's a superceding
22 indictment. It contains two counts, and I just want to
23 confirm that you understand both counts and particularly
24 Count 2, which is the count concerning illegal gambling that
25 I've been advised you will be pleading guilty to.

1 THE DEFENDANT: Yes.

2 THE COURT: I'm going to explain to you next then
3 your right to a trial and what rights you would be waiving
4 by pleading guilty to the charge in Count 2.

5 The first and most important thing you must
6 understand is that you have a right to plead not guilty to
7 this charge and to persist in your plea. Under the
8 constitution and laws of the United States, you would then
9 have a right to a speedy and public trial before a jury with
10 the assistance of your attorney. As you know, as has
11 occurred, if you cannot afford an attorney, the Court will
12 appoint an attorney for you.

13 Do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: You are presumed to be innocent and
16 would not have to prove that you were innocent. At trial,
17 the burden would be on the government to prove beyond a
18 reasonable doubt that you are guilty of the crimes charged.
19 In order to prove you guilty of the crimes charged, the
20 government would have to prove each and every element, each
21 and every part, of that charge beyond a reasonable doubt.

22 So with respect to Count 2, the government would
23 have to prove that your conduct occurred during the period
24 alleged, December 2010 and May 2011, that you did
25 intentionally conduct an illegal gambling business; and

1 more, specifically, that you engaged in the conduct,
2 finance, management, supervision, direction or ownership of
3 a gambling establishment at the location we discussed
4 previously, and that the operation remained in substantially
5 continuous operation for one or more periods in excess of
6 thirty days and had gross revenue of at least \$2,000 in any
7 single day.

8 So if the government failed to present beyond a
9 reasonable doubt any one of the elements, whether \$2,000 or
10 the time period, the jury would have the duty to find you
11 not guilty.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 MS. SEIFAN: Your Honor, I just want to clarify
15 one thing. Under the statute, the government only has to
16 prove that the gambling operated for more than thirty days
17 or had a gross revenue of at least \$2,000 on any single day.
18 We charged it as an "and" because we can prove both, but
19 just for clarification, it's really an "or."

20 THE COURT: All right. Okay, but that's what you
21 have in your indictment.

22 MS. SEIFAN: Yes.

23 THE COURT: One other element that the government
24 would have to prove would be the involvement of five or more
25 persons.

1 Do you understand that, too?

2 THE DEFENDANT: I don't understand that question.

3 THE COURT: The government would have to prove
4 that five or more persons were involved in the illegal
5 gambling operation.

6 THE DEFENDANT: Okay, yes.

7 THE COURT: Let me confirm. If the government
8 fails to present sufficient evidence, the jury would have
9 the duty to find you not guilty on the count for which there
10 is insufficient evidence.

11 Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: In the course of a trial, witnesses
14 for the government would have to come to court and testify
15 in your presence. Your lawyer would have the right to
16 cross-examine the witnesses and to object to evidence
17 offered by the government. You also have the right to offer
18 testimony and other evidence in your behalf and to compel
19 the attendance of witnesses on your behalf.

20 Do you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: Although you have the right to testify
23 at a trial, you cannot be compelled to testify and
24 incriminate yourself. If you decided not to testify, the
25 Court would instruct the jury they could not hold that

1 against you.

2 Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: If you plead guilty, I will ask you
5 questions about what you did, in order to satisfy myself
6 that you are guilty of the charge to which you seek to plead
7 guilty, and you will have to answer my questions and
8 acknowledge your guilt. Thus, you will be giving up the
9 right that I just described: that is, the right not to say
10 anything that would show you are guilty of the crime with
11 which you are charged.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: If you plead guilty and the Court
15 accepts your guilty plea, you will be giving up your right
16 to a trial and all the other rights I've just discussed.
17 There will be no trial, and the Court will simply enter a
18 judgment of guilty based on your plea.

19 Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you willing to give up your right
22 to a trial and the other rights I have discussed with you?

23 THE DEFENDANT: Yes.

24 THE COURT: I understand that you've entered into
25 a written agreement with respect to your guilty plea, and I

1 have in my hand a eight-page document entitled, "Plea
2 Agreement," which has been marked Court Exhibit 1.

3 Would you please take a look at Court Exhibit 1.

4 Have you had an opportunity to read that plea
5 agreement in its entirety?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you discussed it fully with your
8 attorney?

9 THE DEFENDANT: Yes.

10 THE COURT: Is that your signature on page eight
11 of the agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: This agreement provides that you will
14 plead guilty to Count 2 of the superceding indictment. It
15 sets forth various sentencing considerations and other terms
16 with respect to your guilty plea.

17 Do you understand each and every provision of this
18 written plea agreement?

19 THE DEFENDANT: Yes.

20 THE COURT: Does the agreement as written fully
21 and accurately reflect your understanding of the agreement
22 that you've reached with the government?

23 THE DEFENDANT: Yes. Other than the promises
24 contained in this written plea agreement, has anyone made
25 any other promises that have caused you to plead guilty?

1 THE DEFENDANT: No.

2 THE COURT: Has anyone made any promises as to
3 what your sentence will be?

4 THE DEFENDANT: No.

5 THE COURT: Then I would to discuss with you the
6 consequences of pleading guilty today.

7 The statute you're accused of violating with
8 respect to Count 2 of the superceding indictment provides
9 for a term of imprisonment from zero to five years. In
10 determining what sentence to impose within the statutory
11 range, Judge Weinstein will consider the guidelines issued
12 by the United States Sentencing Commission and the other
13 factors specified by 3553(a) of the Criminal Code in
14 determining whether to impose a sentence within the
15 guideline range.

16 The other factors he will consider include: the
17 nature and circumstances of the crimes committed; your
18 characteristics and criminal history; and the public
19 interest in your sentence.

20 Prior to sentencing, the Court will receive a pre-
21 sentence report containing information about those factors
22 and the guidelines. You and your lawyer will have the
23 opportunity to see that report and to speak on your behalf
24 at sentencing.

25 Do you understand?

1 THE DEFENDANT: Yes.

2 THE COURT: Have you talked about the Sentencing
3 Commission Guidelines and how they might apply to your case
4 with your attorney?

5 THE DEFENDANT: Yes.

6 THE COURT: Under the plea agreement, you have
7 agreed to stipulate to the guideline calculation set forth
8 in paragraph 2 of the agreement. So irrespective of
9 whatever factor may come up, you are agreeing not to
10 challenge any calculation within the stipulated six to
11 twelve month period.

12 Do you understand?

13 THE DEFENDANT: No.

14 MR. SUNDARAM: Your Honor, I just need a moment,
15 please.

16 (Discussion held off the record.)

17 MR. SUNDARAM: We're ready to proceed.

18 THE COURT: Okay. So do you understand you've
19 stipulated to the guideline calculation set forth in the
20 plea agreement?

21 THE DEFENDANT: Yes.

22 THE COURT: Notwithstanding the fact that there is
23 a stipulation, I would like the attorneys to tell me on the
24 record what the estimated guideline range will be.

25 MS. SEIFAN: The government estimates the

1 defendant's likely adjusted offense level to be ten, which
2 carries a range of imprisonment of six to twelve months,
3 assuming that he is in category one.

4 THE COURT: Now, keep in mind that ultimately
5 Judge Weinstein will determine what the appropriate
6 guideline range will be, but certainly the stipulation will
7 weigh heavily in his determination. The calculation in the
8 plea agreement could be wrong or change based on new facts
9 obtained. Until a pre-sentence report is prepared and the
10 Court hears from you, your lawyer, and the government at
11 sentencing, we won't know with certainty what the guidelines
12 will be or whether or not there will be grounds to depart
13 from them, or whether the Court will impose a non-guideline
14 sentence.

15 Do you understand?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, under the plea agreement, the
18 government has agreed not to take any position concerning
19 where with in the guideline range, as determined by the
20 Court, your sentence should fall.

21 Do you understand that any recommendation made by
22 you, even if it's not opposed by the government, is not
23 binding and could be rejected by the Court?

24 THE DEFENDANT: Yes.

25 THE COURT: So if your sentence is higher than

1 recommended or expected, you will not be able to withdraw
2 your guilty plea.

3 Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: In addition to imprisonment, you may
6 be sentence to supervised release. Supervised release means
7 that after you are released from prison, your activities
8 will be supervised by the probation department, and there
9 may be may restrictions placed on you, such as travel
10 limitations, requirements that you report to a probation
11 officer, prohibitions on carrying guns, and the like.

12 Do you understand the nature of supervised
13 release?

14 THE DEFENDANT: Yes.

15 THE COURT: The statute you are accused of
16 violating provides for a supervised release term of up to
17 three years. What is important to keep in mind is that if
18 you violate the conditions of release, you could be returned
19 to prison for up to two years, even if the violation occurs
20 close to the end of the supervised period. That means that
21 if you don't follow the conditions of supervised release,
22 your prison term could be substantially lengthened.

23 Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: You could also be subject to a maximum

1 fine of \$250,000 or twice the gross profits of the
2 enterprise. I understand from a proceeding earlier this
3 morning, the government has no evidence that twice the gross
4 profits will exceed the maximum fine amount; is that
5 correct?

6 MS. SEIFAN: That's correct, your Honor.

7 THE COURT: Do you understand what I have just
8 said?

9 THE DEFENDANT: Yes.

10 THE COURT: You will also have to pay a mandatory
11 \$100 special assessment. As the plea agreement provides,
12 you have agreed to forfeiture of \$5,000, and you will have
13 to pay that \$5,000 by the sentencing date or be subject to
14 entry of an order of forfeiture.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, if after you are sentenced you or
18 your attorney think that the Court has not properly followed
19 the law in sentencing you, you ordinarily would have the
20 right to appeal your sentence to a higher court. However,
21 under the plea agreement, you've substantially limited your
22 right of appeal and agreed not to file any appeal or
23 otherwise challenge your sentence or judgment of conviction,
24 if you are sentenced to a term of imprisonment of 12 months
25 or less.

1 Do you understand?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you have any questions you would
4 like to ask me about the charge, your rights, or anything
5 else relating to this matter?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Is everything clear to you?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. Sundaram, do you know of any
10 reason why your client should not enter a plea of guilty to
11 the charge?

12 MR. SUNDARAM: No, your Honor.

13 THE COURT: Are you aware of any viable legal
14 defense?

15 MR. SUNDARAM: No.

16 THE COURT: Mr. DiCristina, are you ready to
17 plead?

18 THE DEFENDANT: Yes.

19 THE COURT: How do you plead to the charge
20 contained in Count 2 of the superceding indictment?

21 THE DEFENDANT: Guilty.

22 THE COURT: Are you making this plea of guilty
23 voluntarily and of your own free will?

24 THE DEFENDANT: Yes.

25 THE COURT: Has anyone threatened or forced you to

1 plead guilty?

2 THE DEFENDANT: No.

3 THE COURT: Other than the written plea agreement
4 marked Court Exhibit 1, which we discussed earlier, has
5 anyone made you any promise that caused you to plead guilty?

6 THE DEFENDANT: No.

7 THE COURT: Has anyone made you any promise about
8 the sentence you will receive?

9 THE DEFENDANT: No.

10 THE COURT: Then I would like you to describe
11 briefly in your own words what you did in connection with
12 the crime charged in Count 2.

13 THE DEFENDANT: Between December of 2010 and May
14 of 2011, I helped run a poker game out of bike shop in
15 Staten Island, New York.

16 THE COURT: Was that bike shop located at 3741B
17 Victory Boulevard?

18 THE DEFENDANT: Yes.

19 THE COURT: Were five or more persons involved in
20 the operations there, the gambling operations?

21 THE DEFENDANT: Yes.

22 THE COURT: Did that gambling operation remain in
23 substantially continuous operation for one or more periods
24 in excess of thirty days?

25 THE DEFENDANT: Yes.

1 THE COURT: Did that operation derive gross
2 revenues of at least \$2,000 in a single day?

3 THE DEFENDANT: Yes.

4 THE COURT: Is that correct?

5 THE DEFENDANT: Yes, wagered, yes.

6 THE COURT: Based on the information given to me,
7 I find that the defendant is acting voluntarily, that he
8 fully understands the charge, his rights, and the
9 consequences of his plea, and that there is a factual basis
10 for the plea. I therefore recommend to Judge Weinstein to
11 accept Mr. DiCristina's plea of guilty to Count 2 of the
12 superceding indictment.

13 I understand that sentencing has been scheduled
14 for March?

15 THE CLERK: March 26 at 10 a.m.

16 THE COURT: Okay.

17 * * * * *

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18 I certify that the foregoing is a correct transcript
19 from the electronic sound recording of the proceedings in
20 the above-entitled matter.
21

22
23 
24

25 ELIZABETH BARRON

January 27, 2012